

TO AMEND SECTION 5908, UNITED STATES COMPILED STATUTES,
1916 (R. S., SEC. 3186, AS AMENDED BY ACT OF MAR. 1, 1879, CH.
125, SEC. 3, AND ACT OF MAR. 4, 1913, CH. 166)

JANUARY 23, 1925.—Committed to the Committee of the Whole House on the
state of the Union and ordered to be printed

Mr. DYER, from the Committee on the Judiciary, submitted the
following

REPORT

[To accompany H. R. 4202]

The Committee on the Judiciary, to whom was referred the bill
(H. R. 4202) to amend section 5908, United States Compiled Statutes,
1916 (R. S., sec. 3186, as amended by act of Mar. 1, 1879, ch. 125,
sec. 3, and act of Mar. 4, 1913, ch. 166), report favorably thereon
and recommend that the bill do pass.

As explanation of the bill and its needs for becoming a law, the
testimony taken by the subcommittee of the Judiciary Committee
in a hearing on this bill is included here. It is as follows:

STATEMENT OF HON. CLARK BURDICK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. BURDICK. This is a similar bill to the one I introduced in the Sixty-seventh Congress. The law provides that all Federal tax liens shall become operative as against mortgagees and purchasers without notice when they are filed with the clerk of the district court of the district, or if the State authorizes the filing of such notices in the county registrar's office, they may be filed there, and then they are a lien against real estate and personal property.

Now, it so happens that in three New England States, to wit, Rhode Island, Vermont, and Connecticut, we have no county registrar. Also in the State of Louisiana, as the law now stands, the act provides that it shall be recorded in the parish recorder's office. Now, we want to provide, in the State of Rhode Island especially, and also I put in Connecticut and Vermont, because those States have no county system, that if the State provides that these notices may be recorded in the office of the registrar or city or town clerk they shall become a lien, or at least they shall then become a valid notice.

Now, the law as it now exists provides for the acquiring of a lien—"the taxes shall become a lien: *Provided, however,* That such lien shall not be valid against such mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated.

"*Provided further*, That whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, and in the State of Louisiana in the parishes thereof, and in the States of Connecticut, Rhode Island, and Vermont in the office of the registrar or recorder of deeds or town or city clerk having the custody of the land records of the towns and cities, then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana."

And then I want to add the words, "and in the States of Connecticut, Rhode Island, and Vermont, in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records of the town or city."

Mr. MONTAGUE. Is that your amendment?

Mr. BURDICK. Yes, sir.

Mr. MONTAGUE. This is the only amendment to that entire statute?

Mr. BURDICK. Yes, sir.

Mr. FOSTER. To take care of those three States?

Mr. BURDICK. To take care of those three States.

Mr. MONTAGUE. All of this is the existing law, is it?

Mr. BURDICK. Yes, sir.

Mr. MONTAGUE. Will you give me the exact words again. They are on page 2.

Mr. BURDICK. On page 2, line 7, beginning at the first of the line, "and in the States of Connecticut, Rhode Island, and Vermont in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records of the towns and cities."

We repeat that again below.

Mr. HICKEY. That is on page 2, beginning at line 7?

Mr. BURDICK. The first of line 7, page 2, and ending with the word "cities," on line 10; and then the same language is repeated on line 14, after the word "Louisiana," "or in the office of the registrar or recorder."

You see, in Rhode Island my office examines a great many titles. We are counsel for two of the banks that make most of the loans—probably 90 per cent of the loans within the county of Newport, and in order to be satisfied that there are no liens we have to go to Providence and the liens may be put on by the time we are traveling back and forth. We did have one such case where we did not go to Providence—we telephoned up and they notified us that there was no such lien. The title passed the next day and the lien had been put on after we had gotten the information, and of course, we were not notified. We had to look out for that afterwards.

Mr. FOSTER. Why do you name so many—in the office of the registrar or recorder of deeds or county or city clerk?

Mr. BURDICK. Well, they are called that.

Mr. FOSTER. Would you have two in one State—a registrar and a recorder of deeds?

Mr. BURDICK. Yes; in the city of Providence there is the registrar of deeds. If the real estate is in the city of Providence they may go to the registrar of deeds and the lien would have to be filed there. In the city of Pawtucket, they may have to go to the recorder of deeds. In the city of Newport we have the city clerk.

Mr. MONTAGUE. Each officer is an officer of registration? They are the different names for the officer?

Mr. BURDICK. Yes, sir.

Mr. FOSTER. There is no political subdivision in which two of them can exist?

Mr. BURDICK. No, sir. In the city of Newport, the law requires all deeds to be registered with the city clerk; in the adjoining town they must be filed with the town clerk; and in the city of Providence they call him registrar of deeds, I think, and in the city of Pawtucket they call him the recorder of deeds. That was put in there for that purpose.

This matter was called to my attention by a former United States district attorney, who is now counsel for the Title Guaranty Co. of Rhode Island. He drafted the form of the act, and he has sent me to-day a little brief—three copies—which I would like to leave with the committee.

He calls to the committee's attention the fact of the laws of the State of Rhode Island which provide for these different officers.

Mr. FOSTER. Why not incorporate that brief in the hearings?

Mr. BURDICK. I would like to incorporate that in the record.

Mr. DYER. Incorporate it as part of Mr. Burdick's statement.

Mr. BURDICK. He also suggests a question as to whether or not the title of the bill is correct. He says:

"I also desire to draw your attention to the form of the bill as printed which is slightly different from the form used in the State legislature, here. Is it technically correct to amend the Federal Statutes, or should the bill be as follows:

"A bill to amend Revised Statutes, section 3186, as amended by act of March 1, 1879, chapter 125, section 3, and an act of March 4, 1913, chapter 166." (Etc.)

In other words, he says:

"I am not at all sure whether or not the United States Compiled Statutes (1916), which is a publication of the West Publishing Co., St. Paul, Minn., is officially recognized by the United States. I, therefore, bring this matter to your attention that it may be corrected, if necessary."

Mr. FOSTER. If you would just reverse what is in parentheses and throw the other first you would still show what is referred to and still have the additional reference to the Revised Statutes.

Mr. BURDICK. That was called to my attention just this morning. If possible, I would like to look that up and consult with your drafting clerk.

Mr. KURTZ. I wonder whether or not an amendment might be inserted there providing for the situation in our State. In our State the office with whom these papers should be filed is known as the office of the clerk of the court of common pleas. All liens in the State of Pennsylvania are filed in the office of the clerk of the court of common pleas. None of them is ever filed in the office of the recorder of deeds at all.

Mr. BURDICK. These liens we are looking out for are liens of United States taxes. The law to-day does not require that they shall be filed in the court of common pleas.

Mr. KURTZ. Do you not think it would be well for them to have that provision in there?

Mr. BURDICK. I should think it would be well for the State of Pennsylvania, but they can not do it under this act, because this law only allows them to file it in the office of the recorder or registrar of deeds.

Mr. MONTAGUE. Do you think the courts would construe that to be a registrar or the man who keeps the register of deeds?

Mr. KURTZ. I do not know. The registrar or register of deeds is the same as the recorder in our State of Pennsylvania. But all liens and all judgments are filed in the office of the clerk of the court of common pleas, even city liens.

Mr. MONTAGUE. In my State we have no recorder or registrar at all. It is filed in the clerk's office.

Mr. BURDICK. In Pennsylvania notice of a tax lien of the United States must be filed either with the district court clerk or with your county clerk, if you have one, and not with the superior court clerk.

Mr. KURTZ. The county clerk is the clerk of the court of common pleas.

Mr. BURDICK. That is all right then, because that is referred to by the existing law.

Mr. KURTZ. The existing law says it shall be filed by the collector in the office of the clerk of the district court.

Mr. BURDICK. And if the State passes such amendment, enabling legislation, then in the office of the recorder of deeds of the county.

Mr. KURTZ. But I should think it would be wise in our State to have that extended so that it could also be filed at the instance of the Commonwealth in the proper office for the filing of deeds.

Mr. HICKEY. That would cover it all.

Mr. BURDICK. I have not the Pennsylvania law, and I am only looking out for New England.

The brief of the ex-United States district attorney states that this legislation has already been passed by our general assembly, so that if this bill is passed by the Congress it will be operative.

Mr. FOSTER. What does this first sentence mean:

"If any person neglects to pay any taxes, neglects to pay them after demand-
ed?"

Do all of them have to be demanded?

Mr. BURDICK. I think that is your law.

Mr. FOSTER. Is it not a lien if you do not pay it without demand?

Mr. MONTAGUE. I think it is a demand by operation of law, which becomes operative just as soon as the taxes are not paid. I am not sure, but I think that is the law.

Mr. BURDICK. I think so, too. I think that the moment they assess these taxes they file the notice.

Mr. HICKEY. Is it not a kind of fiction that taxes first run against the personal property and if they are not satisfied in that way they run against the land, or anything? That is, State taxes, at least.

Mr. MONTAGUE. I think the demand is a fiction. The law makes the demand.

Mr. BURDICK. This provision of the statute was amended to cover Louisiana after a decision of the United States court, and now we would like to have it amended so it can cover our State.

Mr. DYER. Do you want to submit any other matter?

Mr. BURDICK. I only want to look up that matter of the proper title.

Mr. DYER. Will you let us hear from you?

Mr. BURDICK. Yes, sir.

MEMORANDUM IN SUPPORT OF H. R. 4202, SIXTY-EIGHTH CONGRESS, FIRST SESSION—A BILL TO AMEND REVISED STATUTES, SECTION 3186, AS AMENDED BY ACT OF MARCH 1, 1879, CHAPTER 125, SECTION 3, AND ACT OF MARCH 4, 1913, CHAPTER 169

The proposed bill is designed to correct a technical defect in the present law in relation to the recording of Federal tax liens. This defect in the Federal Statutes arises from the fact that the present law does not recognize the town systems of recording evidences of land title which exists in Rhode Island and two other New England States—Vermont and Connecticut. In Rhode Island all deeds, mortgages, liens, attachments, and other evidences of title are required by law to be recorded in the records of land evidence of the city or town in which the land in question is situated. The officers in charge of such record offices are variously the town and city clerk or recorder of deeds, as the case may be. General Laws of Rhode Island, 1923, chapter 297, section 2 (formerly General Laws of Rhode Island, 1909, ch. 253, sec. 2).

Under the present Federal law the only recording systems recognized are the county systems, which are generally prevalent through the United States, and the parish system, which is peculiar to the State of Louisiana. The county system prevails in all but four of the States of the United States. The parish system was recognized in the present law due to the fact that the proviso in Revised Statutes, section 3186, as amended, was inserted because of the difficulties occasioned by the decision of the Supreme Court in the case of United States against Snyder (149 U. S. 210, 37 L. Ed. 705), decided in the Supreme Court of the United States in 1893. This case was a Louisiana case involving the sale of real estate in the city of New Orleans under a lien for internal revenue taxes. The lien in question was recorded in the clerk's office of the district court for the district in which the land lay, but was never recorded in the mortgage office of the parish of Louisiana as required by the law of the State of Louisiana in order to affect third persons. It was decided by the court that the tax system of the United States is not subject to the recording laws of the States.

To protect third persons; mortgagees and bona fide purchasers of value, by act of March 4, 1913, the proviso of the statute, as amended, provides that where the State by appropriate legislation authorizes the filing of notice in the proper record office that a tax lien will not be valid against a bona fide mortgagee or purchaser for value unless so recorded. This proviso recognizes county systems of recording and the parish system in the State of Louisiana, but does not recognize the town systems of the New England States of Rhode Island, Connecticut, and Vermont.

The present law is as follows:

"SEC. 5908. (Rev. Stat., sec. 3186, as amended, act March 1, 1879, ch. 125; sec. 3; and act March 4, 1913, ch. 166.) Lien for taxes: If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: *Provided further,* That whenever any State by appropriate legislation authorized the filing of such notice in the office of the registrar or recorder of deeds of the counties of the State, or in the State of Louisiana in the parishes thereof, then such lien shall not be valid in that State as against any mortgagee, purchaser, or judgment creditor until such notice shall be filed in the office of

the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, within which the property subject to the lien is situated."

It is now sought to amend this law so that it will read as follows:

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: *Provided further,* That whenever any State by appropriate legislation authorized the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, and in the State of Louisiana in the parishes thereof, and in the States of Connecticut, Rhode Island, and Vermont, in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records of the towns and cities, then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, or in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records in the States of Connecticut, Rhode Island, and Vermont of the towns or cities within which the property subject to the lien is situated."

It is clear that to properly protect third persons, i. e., mortgagees and purchasers for value without notice in the State of Rhode Island, Connecticut, and Vermont, that the act H. R. 4202 should be enacted so that permissive legislation which has already been passed in the State of Rhode Island will protect mortgagees and bona fide purchasers for value against Federal tax liens by compelling the collector of internal revenue to record Federal tax liens in the same office that other evidences of title are now required to be recorded if they are to be valid against third persons, i. e., mortgagees and bona fide purchasers for value.

To the examiners of titles in the State of Rhode Island such legislation is extremely important, as it will enable them to determine whether titles to real estate are subject to Federal tax liens by examining the records which they are customarily in the habit of examining, namely, those in the office of the proper record officer for the town or city in which the land lies.

Respectfully submitted.

HARVEY A. BAKER,
Attorney for the Title Guarantee Co. of Rhode Island.

